No. 93-369

SUPREME COURT, U.S.
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In The

Supreme Court of the United States

October Term, 1993

FRED WILLIAMS,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondents.

Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Is a medical student who received scholarship funds pursuant to 42 U.S.C. § 254(l), for the first three years of his medical school education, but who did not accept scholarship funds for his final year of medical school, liable to the government for more than the amounts which have been paid to him, including interest, pursuant to 42 U.S.C. § 254o(a)(1)(D)?

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REFERENCE TO OFFICIAL AND UNOFFICIAL REPORTS OF OPINIONS DELIVERED BY OTHER COURTS OR ADMINISTRATIVE AGENCIES

The Ninth Circuit Court of Appeals' decision in this case, affirming the District Court's judgment in favor of the government, is entitled *U.S. v. Williams*, No. 92-15042, and is reported at 994 F.2d 646 (9th Cir. 1993).

JURISDICTION STATEMENT

This Court's jurisdiction to review the opinion of the Court of Appeals is founded upon 28 U.S.C. § 1254(1). On May 19, 1993, the U.S. Court of Appeals for the Ninth Circuit filed an opinion affirming a judgment of the U.S. District Court for the District of Arizona. On November 20, 1991, the District Court for the District of Arizona granted the United States' *Motion for Summary Judgment* against Williams on the government's claim for damages pursuant to 42 U.S.C. § 254o(b)(1)(A), in the amount of $166,225.68 plus interest and costs.

STATUTES AND REGULATIONS

Williams received funds from the federal government through a scholarship awarded by the National Health Service Corps Scholarship Program pursuant to 42 U.S.C. § 254*l*. The United States filed a complaint in the U.S. District Court for the District of Arizona to collect damages it alleged Williams owed for breach of his scholarship contract pursuant to 42 U.S.C. 254o(b)(1)(A) § and 42 C.F.R. § 62.10. These provisions are set forth verbatim in Appendix E hereto.

STATEMENT OF THE CASE

Petitioner, Fred Crump Williams, Jr., attended the Baylor College of Medicine ("Baylor"), in Houston, Texas, from July, 1979, until his graduation in June, 1983. Williams' initial interest in the field of medicine was in the field of primary care. As a result, he applied for a scholarship to the National Health Service Corps (NHSC) Scholarship Program for the 1979-80 school year. Williams was awarded an NHSC scholarship and signed the scholarship program contract on May 24, 1979. Williams received a total of $7,283 in 1979-80. On February 13, 1980 and March 27, 1981, Williams signed continuing scholarship agreements with the NHSC for 1980-81 and 1981-82 school years, respectively. Williams received $6,642 in 1980-81 and $8,257 in 1981-82. Williams received a total of $22,182 in scholarship funds

during his three years of participation in the program.

Williams' medical specialty interest changed during his third year of medical school, and he declined scholarship funds for the 1982-83 academic year. Williams did not sign the scholarship "continuation contract" for the 1982-83 school year, sent to him on February 12, 1982. He notified Baylor College of Medicine not to accept funds for this program on his behalf. No funds were transmitted from NHSC to Baylor on Williams' behalf during that school year. Williams paid for his own education in his final year of medical school. He graduated from Baylor in June of 1983 with an intent to specialize in surgery.

Williams continued his post-graduate education, completing his surgery internship in June of 1984, and began his neurosurgery residency at the University of

California at Irvine, in July of 1984. In January of 1985, Williams transferred his neurosurgery residency to the Barrow Neurological Institute in Phoenix, Arizona. He completed his neurosurgery residence there in June, 1989. None of Williams' post-graduate education was financed by the NHSC.

Williams was unable to complete any service related payback program for the NHSC. Williams did enter into a service pay-back agreement with NHSC toward the end of his neurosurgery residency. The sites provided to Williams only allowed for practice in the areas of general surgery, ophthalmology, and orthopedics. Because he was not qualified or trained to practice in these areas, he was not able to match any of the service sites.

Williams entered into a repayment agreement with NHSC in April of 1986, and

paid to a government appointed collection agency the sum of $6,777.00. After payment of that sum, a dispute arose as to how much money Williams owed the government, and Williams ceased making payments. The government subsequently brought this action against Williams to collect not only the amount of the scholarship funds Williams received ($22,182.00), but also to collect treble damages, interest, and penalties totalling $166,255.68. Williams refused to pay this amount, and urged the District Court to deny the government's request for judgment against him for more than the amount of the scholarship funds he actually received, with appropriate interest. The District Court, however, rejected Williams' arguments and entered summary judgment for the government and against him for the full amount the government demanded.

The District Court assumed jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1345. The District Court entered an order granting the government summary judgment on or about November 19, 1991. The District Court entered formal judgment in favor of the government and against Williams, in the sum of $166,255.68 on November 20, 1991.

Williams filed a timely *Notice of Appeal* to the Ninth Circuit Court of Appeals, on December 17, 1991. The Ninth Circuit Court of Appeals assumed jurisdiction to hear and determine Williams' appeal pursuant to 28 U.S.C. § 1291. On May 19, 1993, the Ninth Circuit Court of Appeals issued an opinion affirming the judgment of the District Court in favor of the government and against Williams for the amount of $166,255.68 plus post-judgment interest and

costs. Williams seeks review by this Court of the Ninth Circuit Court of Appeals' decision, pursuant to 28 U.S.C. § 1254.

REASONS FOR GRANTING

THE WRIT OF CERTIORARI

A. IN A CASE OF FIRST IMPRESSION, THE NINTH CIRCUIT COURT OF APPEALS ERRED IN ITS INTERPRETATION OF A FEDERAL STATUTE.

The Ninth Circuit Court of Appeals, in its opinion, stated:

> "This is the first case to present a subsection (a)(1)(D) fact pattern.[1] Neither the government's cited cases, *United States v. Bills*, 822 F.2d 373 (3d Cir. 1987) and *United States v. Turner*, 660 F.Supp. 1323 (E.D.N.Y. 1987), is on point because the defendants in both cases continued to receive scholarship funds through graduation, and neither defendant refused receipt of scholarship funds, in whole or in part. Therefore, this case presents a statutory interpretation question of first impression." 994 F.2d at 648.

Interpretation of 42 U.S.C. § 2541, et. seq., will reoccur. Numerous doctors, nurses, veterinarians and pharmacists have

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[1] 42 U.S.C. § 254(o)(a)(1)(D).

been educated through the use of NHSC scholarship funds. Many of these medical providers, due to personal circumstances or change in their educational interests, will cease receiving scholarship funds in whole or in part, prior to graduation. The government will now continue to pursue these students and demand they pay treble the amounts they received pursuant to their scholarships despite the clear meaning of the statute in scrutiny. As a result, numerous future medical providers will be affected by this Court's interpretation of this federal legislation.[2]

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[2] There have already been numerous reported decisions of the federal circuit courts and district courts interpreting 42 U.S.C. § 254(l), et seq. These courts have been asked to determine whether a doctor was excused from his service obligation because the Department of Health and Human Services changed its deferment policy. *U.S. v. Citrin*, 972 F.2d 1044 (9th Cir. 1992); whether the Secretary of Health and Human Services failed to waive or suspend any or all of the service of payment obligations of participant based upon undue hardship.

The Ninth Circuit's decision was predicated on its interpretation of 42 U.S.C. § 254o entitled "Breach of

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Boungiorno v. Sullivan, 912 F.2d 504 (D.C. Cir. 1990); whether requiring a physician to exercise the private practice option to satisfy the service requirement in a listed service area is an appropriate means by which the Secretary can ensure the purposes of the program are advanced. *U.S. v. Duffy*, 879 F.2d 192 (6th Cir. 1989); whether a particular service obligation poses an undue hardship and is against equity in good conscience. *U.S. v. Melendez*, 944 F.2d 216 (5th Cir. 1991); whether the Secretary gave a physician an opportunity to participate in the placement program and whether the Secretary complied with the statutory duty and administrative obligations under the program. *Rendlemann v. Bowen*, 860 F.2d 1537 (9th Cir. 1988); whether a physician's failure to report to a hospital to which he had been assigned or to seek timely deferment of the service obligation, after completing medical education under the program, entitled the government to three times the amount of her scholarship, plus interest. *U.S. v. Conway*, 686 F.Supp. 571 (E.D. La. 1988) 868 F.2d 1269 (5th Cir. 1989); whether the liquidated damage provision contained in the scholarship application providing for treble damages plus interest is valid and enforceable and did not constitute a penalty. *U.S. v. Hayes*, 633 F.Supp. 1183 (N.D.N.C. 1986); see also *U.S. v. Cooper*, 699 F.Supp. 69 (W.D. Pa. 1988); and *United States v. Swanson*, 618 F.Supp. 1231 (E.D. Mich. 1985).

Scholarship Contract or Loan Repayment Contract". That statute provides, in pertinent part:

> "(a)(1) An individual who has entered into a written contract with the Secretary under section 338A [42 USCS § 254 *l*] and who —
>
> (A) fails to maintain an acceptable level of academic standing in the educational institution in which he is enrolled (such level determined by the educational institution under regulations of the Secretary),
>
> (B) is dismissed from such educational institution for disciplinary reasons,
>
> (C) voluntarily terminates the training in such an educational institution for which he is provided a scholarship under such contract, before the completion of such training, or
>
> (D) fails to accept payment, or instructs the educational institution in which he is enrolled not to accept payment, in whole or in part, of a scholarship under such contract,in lieu of any service obligation arising under such contract, shall be liable to the United States for the amount which has been paid to him, or on his behalf, under the contract.
>
> (2) An individual who has entered into a written contract with the Secretary under section 338B [42 USCS § 254*l*-1] and who —
>
> (A) in the case of an individual who is enrolled in the final year of a course of study, fails to maintain an acceptable level of academic standing in the educational institution in which such individual is enrolled (such level

determined by the educational institution under regulations of the Secretary) or voluntarily terminates such enrollment or is dismissed from such educational institution before completion of such course of study; or

(B) in the case of an individual who is enrolled in a graduate training program, fails to complete such training program and does not receive a waiver from the Secretary under section 338B(b)(1)(B)(ii) [42 U.S.C. § 254*l*-1(b)(1)(B)(ii), in lieu of any service obligation arising under such contract shall be liable to the United States for the amount that has been paid on behalf of the individual under the contract.

(b)(1)(A) Except as provided in paragraph (2), if an individual breaches his written contract by failing (for any reason not specified in subsection (a) or section 338F(d) [42 U.S.C. § 254p(d)] either to begin such individual's service obligation under section 338A [42 U.S.C. § 254*l*] in accordance with § 338C or 338D [42 U.S.C. §§ 254m or 254n] or to complete such service obligation, the United States shall be entitled to recover from the individual an amount determined in accordance with the formula

$$A = 3\varnothing\left(\frac{t-s}{t}\right)$$

in which "A" is the amount the United States is entitled to recover, " " is the sum of the amounts paid under the subpart to or on behalf of the individual and the interest on such amounts which would be payable if at the time the amounts were paid they were loans

> bearing interest at the maximum legal prevailing rate, as determined by the Treasurer of the United States; "t" is the total number of months in the individual's period of obligated service; and "s" is the number of months of such period served by him in accordance with section 338C [42 USCS § 254m] or a written agreement under section 338D [42 USCS § 254n)."

42 U.S.C. § 254o requires treble damages upon breach of an NHSC scholarship contract ONLY if the breach is for a reason not specified in 42 U.S.C. § 254o(a). The statute is clear and unambiguous. Any individual who completes his education under the NHSC scholarship program is obligated to provide service or pay treble damages. However, if an individual, at any time during his education, declines participation in the program and bears the expense of his own education, the individual is not obligated to perform service, but is required to repay monies actually advanced by the government, plus accrued interest.

The fact that Williams received some funds under the NHSC scholarship program does not exclude him from the category of individuals set forth in 42 U.S.C. § 254o(a)(1)(D). That subsection specifically contemplates situations where individuals have received some money under the NHSC scholarship program, but voluntarily discontinue participation in the program. Williams voluntarily discontinued his participation in the program and elected to pay the cost of his fourth year of medical school education. Williams discontinued participating in the NHSC program pursuant to subsection (a)(1)(D), and the plain meaning of the statute compels the result urged by Williams. He is liable for the actual monies received, plus accrued interest, and no more.

Despite the fact Williams fell within the purview of 42 U.S.C. § 254o(a)(1)(D), because he "failed to accept payment or instructed the educational institution in which he was enrolled not to accept payment, in whole or in part, of a scholarship under such contract", when he did not extend his scholarship to include his fourth and final year at Baylor Medical School, the Ninth Circuit Court of Appeals held that Williams should be subjected to treble damages because the Court was not persuaded that subsection (a)(1)(D) has this "plain meaning". 994 F.2d at 649.

The Ninth Circuit panel stated that it was compelled to reach this conclusion for two reasons. First, the Court was not persuaded of the "plain meaning" of the statute. Second, the Court concluded that subsection (a)(1)(D) was meant to treat each year that a recipient received

scholarship funds as a separate and independent contract. As a result, the Court concluded that subsection (a)(1)(D) applies only in situations where a scholarship recipient signs a written contract for a given year and then later, during the course of that year, fails to accept payment or directs his or her school not to accept payment, in whole or in part, for that given year. 994 F.2d 649.

This interpretation of 42 U.S.C. § 254(o)(a)(1)(D), is contrary to the express language of the statute. The Ninth Circuit's interpretation of this statute requires a substitution of statutory language to achieve the judicially desired result reached by this particular Court. The Ninth Circuit's interpretation of this statute is contrary to this Court's consistent decisions regarding the

interpretation and application of Congressional enactments.

In *U.S. v. RonPar Enterprises, Inc.*, 489 U.S. 235, 109 S.Ct. 1026, 103 Law Ed.2d 290 (1989), this Court stated that the plain meaning of legislation should be conclusive, except in the "rare cases [in which] the literal application of the statute will produce a result demonstrably at odds with the intentions of its drafters." Citing *Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 571, 102 S.Ct. 3245, 3250, 73 L.Ed.2d 973 (1982). In such cases, the Court stated the intention of the drafters, rather than the strict language, controls. *Ibid.* 109 S.Ct. at 1031. In *Union Bank v. Wolas*, ____ U.S. ____, 112 S.Ct. 527, 116 L.Ed.2d 514 (1991), this Court stated that the fact that Congress may not have foreseen all of the consequences of a statutory enactment

is not a sufficient reason for refusing to give effect to its plain meaning. Citing *Toibb v. Radloff*, 501 U.S. ____, 111 S.Ct. 2197, 115 L.Ed.2d 145 (1991).

The Ninth Circuit concluded that the term "scholarship" refers to a single, one-year unit corresponding to a given school year. Citing 42 U.S.C. § 254*l*(f)(1)(B)(iv). That interpretation of this legislation is not consistent with the plain meaning of the statute.

42 U.S.C. § 254(o)(a)(1)(D) states that if an individual has entered into a contract with the secretary under § 254*l* of this title, and he fails to accept payment, or instructs the educational institution in which he is enrolled not to accept payment, in whole or in part, of a scholarship under his contract, [then] in lieu of any service obligation arising under his contract, the participant is liable to the United States

for the amount which has been paid to him, or on his behalf, under the contract. The plain meaning of this statute is that if a participant enters into a written contract, but fails to accept a payment for any scholarship year, pursuant to his contract, then in lieu of service, he is liable to the federal government only for those amounts which have been paid to him or on his behalf, under the contract - not just for a particular scholarship year.

The statute in question states that a participant who has signed a contract under § 2541, and who fails to accept payment or instructs the institution not to accept payment under the contract, is liable to the government only for the amounts which he has been paid under the contract. In other words, termination of the scholarship funds prior to the participant's completion of his medical education only gives rise to

a requirement that the participant repay the amounts advanced by the government under the contract. This interpretation of 42 U.S.C. § 254o(a)(1)(D) is consistent with the statutory scheme which does not impose treble damages upon those who do not complete medical school because of academic, disciplinary, or voluntary termination of their medical school education. The Ninth Circuit decision is directly contrary to the express language of the statute.

The Ninth Circuit's interpretation of 42 U.S.C. § 254(o) is also contrary to 42 U.S.C. § 254m. This statute provides, in pertinent part:

> "(b)(1) If an individual is required under subsection (a) of this section to provide service specified in § 254(l)(f)(1)(B)(iv) or § 254(l-1)(f)(1)(B)(iv) of this title (hereinafter in this subsection referred to as "obligated service"), the secretary shall, not later than ninety days before the date described in paragraph (5), determine if the individual shall provide such service -

(A) As a member of the corps who is a commissioned officer in the regular or reserve corps of the service, or who is a civilian employee of the United States, or
(B) As a member of the corps who is not such an officer or employee, and shall notify such individual of such determination.

* * *

(5)(A) In the case of the Scholarship Program, with respect to an individual receiving a degree from a school of medicine, osteopathic medicine, dentistry, veterinarian medicine, optometry, podiatry, or pharmacy, the date referred to in paragraphs (1) through (4) shall be the date on which the individual completes the training required for such degree, ...

* * *

(c) An individual shall be considered to have begun serving a period of obligated service -

(1) on the date such individual is appointed as an officer in a Regular or Reserve Corps of the Service or is designated as a member of the Corps under subsection (b)(3) or (b)(4) of this section, or

(2) In the case of an individual who has entered into an agreement with the secretary under § 254*n* of this title on the date specified in such agreement,

whichever is earlier."

A participant's liability arising from a breach of the scholarship contract hinges upon whether the breach occurs before or after appointment to the corps. See, concurring and dissenting opinion of Circuit Judge Becker, in *U.S. v. Bills*, 822 F.2d 373, 380 (3d Cir. 1987). Subsection (a) of § 254o deals with breaches occurring prior to the participant's appointment to the National Health Service Corps, as a result of such matters as failure to maintain academic standing, dismissal from institution, or voluntary termination or failure to accept payment.

In contrast, subsection (b) of § 254(o) deals with breaches that occur as a result of an individual's failure to "begin ... or to complete [his/her] service obligation." Because 42 U.S.C. § 254(m)(c)(1) provides that the service obligation begins on the date an individual

is appointed to the corps. Subsection (b) of § 254(o) obviously deals with breach of the scholarship agreement after appointment. Damages for this type of breach are trebled.

In this case, Williams received three years of scholarship funds, but failed to complete his medical school education under the scholarship program. Because Williams did not utilize scholarship funds to complete his medical school education, he did not become obligated to provide service to the federal government pursuant to 42 U.S.C. § 254(m). That statute specifically states that Williams' service obligation did not arise until he was appointed to the corps.[3] Williams was never appointed to the corps. As a result, he never incurred a service obligation pursuant to law. The Ninth Circuit ignored these express

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[3] See 42 U.S.C. § 254*m*(b)(3) and (4).

statutory provisions, apparently because they did not like the result which Congress had directed by statute. Clearly, Congress has the right to amend the statute if a different result is desired. The judiciary does not have the right to amend the statute. The Ninth Circuit constructed an interpretation of this statute despite the express language of this Congressional enactment. The Ninth Circuit's interpretation of this statutory scheme is forbidden by this Court's clear mandates with regard to statutory construction and their decision should be reversed by this Court.

CONCLUSION

The Ninth Circuit's decision in this case is contrary to the express provisions of Congressional legislation. The 9th Circuit ignored the plain meaning of the statutory language and instead attempted to craft a decision it claimed was consistent with the legislative intent. The 9th Circuit's decision is contrary to this Court's dictates regarding statutory construction. Because this is a case of first impression, and because the 9th Circuit has failed to apply the "plain meaning" of the legislation at issue, this Court should grant Williams this Petition for Writ of Certiorari.

Respectfully submitted this 27th day of August, 1993.

MESCH, CLARK & ROTHSCHILD, P.C.

By J. Rothschild
Jonathan Rothschild

FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA Plaintiff-Appellee, v. FRED C. WILLIAMS, Defendant-Appellant.	No. 92-15042 D.C. No. CV-90-00438-ACM OPINION

Appeal from the United States District Court

for the District of Arizona
Alfredo C. Marquez, District Judge, Presiding

Argued and Submitted
April 15, 1993—San Francisco, California

Filed May 19, 1993

Before: Alfred T. Goodwin, Procter Hug Jr., and
Betty B. Fletcher, Circuit Judges.

Opinion by Judge Goodwin

SUMMARY

Government Law/Education

The court of appeals affirmed a judgment of the district court.

The court held that a medical student who had received funds through

the National Health Service Corps (NHSC) Scholarship Program for three of his four years in medical school and then breached his service agreement with the program was liable for treble damages on the scholarship amounts paid to him.

Appellant Fred Williams received NHSC scholarship funds for his first three years in medical school. Tuition, expenses, and a monthly stipend were paid. The program required one year of participation in the NHSC after medical school for each year funds were provided. Williams did not extend his contract for his fourth year. Williams did not participate in NHSC after graduation, either directly or through a deferment of enrollment in a residency program. Appellee United States demanded payment of treble damages pursuant to Williams's contract.

The statutory scheme provided for treble damages for failure to begin or complete the agreed service obligation. A subsection in that provision limited repayment only to amounts actually paid under the contract when a medical student did not accept all or a part of a scholarship. Williams contended that the latter provision applied to him.

After some negotiation, and partial payment by Williams, the government sued in district court, which granted summary judg-

ment for treble damages plus interest and costs.

[1] The Statute used the term scholarship to mean a single, one-year unit corresponding to a given school year, not a collective reference including all four years of medical school. [2] Each year of medical school in which Williams received scholarship funds was separate and independent, consistent with the requirement of one year of service for one year of funding. The section under which Williams sought protection applied only to not accepting continuing payment during the course of a given year, in which case a service obligation would not be incurred for that particular year. [3] Williams did not evade his previously incurred service obligation by declining scholarship funds in his fourth year. The program was not solely a subsidy of his professional education, but was intended to provide physicians in geographic areas where they were needed. [4] Congress intended that except in narrowly defined circumstances, those receiving scholarship funds either complete their service obligations or pay substantial penalties.

COUNSEL

Jonathan Rothschild, Mesch, Clark & Rothschild, Tucson, Ariz-

ona, for the defendant-appellant.

James D. Whitney, Assistant United States Attorney, Tucson, Arizona, for the plaintiff-appellee.

OPINION

GOODWIN, Circuit Judge:

Fred C. Williams, Jr., appeals from the district court's grant of summary judgment and treble damages to the United States. The government sued to collect money paid to Williams while he was attending medical school on a National Health Service Corps. ("NHSC") scholarship, pursuant to 42 U.S.C. § 254*l*.

Williams argues that because he did not accept payment under his scholarship contract during his last year of medical school, he is not subject to the treble damages provisions of 42 U.S.C. § 254*o*(b). Instead, Williams contends that he is required only to repay the government "the amount which has been paid to him, or on his behalf, under the contract" pursuant to 42 U.S.C. § 254*o*(a)(1)(D). We reject Williams' construction of the statute and affirm.

BACKGROUND

Williams attended the Baylor College of Medicine in Houston, Texas ("Baylor"), from July 1979 until his graduation in June 1983. In order to finance his education at Baylor, Williams applied for, and received, an NHSC scholarship. The NHSC Scholarship Program is governed by 42 U.S.C. §§ 254*l*-254*o*, and administered by the Department of Health and Human Services ("HHS").[1] For each year of participation in the program, scholarship recipients are awarded the cost of tuition, funds for other reasonable educational expenses, and a monthly stipend. In exchange for such financial assistance, scholarship recipients agree to serve in the NHSC for one year for each year scholarship funds are provided, with a minimum obligation of two years.

On May 24, 1979, Williams signed a written contract with the NHSC Scholarship Program for the 1979-1980 school year. Williams exercised options to extend that contract for the 1980-1981 and 1981-1982 school years as well. During his fourth and last year of medical school, however, Williams elected not to extend

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[1] Congress established the NHSC Scholarship Program to provide primary health services in underserved areas. *See Rendleman v. Bowen*, 860 F.2d 1537, 1541 (9th Cir. 1988); *United States v. Citrin*, 972 F.2d 1044, 1046 (9th Cir. 1992).

his contract. Williams explains that upon his entry into the program, he was initially interested in the field of primary care. Prior to his fourth year, however, Williams decided to change the course of his career and specialize in surgery. As a result of his decision not to extend his contract, no funds were paid to him or on his behalf during that fourth year.

Williams received a total of $22,182 in scholarship funds during his three years of participation in the program: $7,283 in 1979-80, $6,642 in 1980-81, and $8,257 in 1981-82.

Prior to Williams' graduation from Baylor, HHS sent Williams a Deferment Information Bulletin explaining that participants in the program may request deferment of their service obligations so that they can participate in an approved residency program. The Bulletin explained that any request for deferment must be received by HHS by June 30, 1983. After Williams did not respond to the Bulletin, HHS sent another notice advising him to respond immediately so as not to miss the deferment deadline. Again, Wiliams did not respond. Consequently, HHS notified Williams that he would be placed in default status as of September 30, 1983. In a November 14, 1983 letter sent by certified mail to Williams' permanent address, HHS explained that because of his default, Williams was liable for treble damages which he would

have to pay by September 30, 1984 pursuant to 42 U.S.C. § 254*o*(b)(1)(B)(i). Williams made no payments within the prescribed period.

The record reveals that Williams subsequently moved to California and failed to inform HHS of his new address. In California, Williams began a neurosurgery residency which he completed in Arizona. During this period, Williams paid HHS a total of $6,770 on his debt through a collection agency.

In 1987, Williams telephoned HHS expressing his desire to fulfill his obligation through service. Congress had recently enacted the Special Repayment Provision of the NHSC Scholarshp Program which allowed participants like Williams who were in breach of their obligations to be relieved of their liability by serving in an area designated as a Health Manpower Shortage Area. Ultimately, however, Williams and HHS were unable to find a site in need of his particular specialty; neurosurgery (a specialty not approved by the scholarship program). As a result, HHS again notified Williams that he was obligated to pay his debt, and sent a December 1989 letter demanding payment of the balance of Williams' debt, which, the letter explained, amounted to $159,369 as of November 30, 1989. This amount consisted of $66,546 in principal (the original loan amount of $22,182, trebled),

and $92,823 in interest. When Williams failed to respond, the matter was transferrred to the Department of Justice.

The district court granted summary judgment to the government after finding Williams liable for defaulting on his loan agreement. The court concluded that Williams' failure to renew his contract for the fourth and final year of medical school in no way constituted a recission of the previous contracts Williams had signed. The court awarded the government the full $166,255.68 plus interest and costs.

STANDARD OF REVIEW

A grant of summary judgment is reviewed de novo, as a question of law. *Jones v. Union Pacific R.R.*, 968 F.2d 937, 940 (9th Cir. 1992). Viewing the evidence in the light most favorable to the nonmoving party, this court determines whether there are any genuine issues of material fact and whether the district court correctly applied the relevant substantive law. *Federal Deposit Ins. Corp. v O'Melveny & Myers*, 969 F.2d 744, 747 (9th Cir. 1992) This court may affirm the district court on any ground supported

by the record. *United States v. State of Washington*, 969 F.2d 752, 755 (9th Cir. 1992).

DISCUSSION

Williams does not deny the fact that he has breached his NHSC scholarship contract. The sole issue in this case involves which damages provision applies to Williams: (1) 42 U.S.C. § 254*o*(b)(1)(A), providing for a payment of treble damages, to be determined by a specified formula; or (2) 42 U.S.C. § 254*o*(a)(1), providing for payment of damages equal to the amount which has been paid to the scholarship recipient, or on his behalf, under the contract.

Section 254*o*(b)(1)(A), the NHSC Scholarship Program's treble damages provision, provides in relevant part:

> [I]f an individual breaches his written contract by failing (for any reason not specified in subsection (a) of this section...) either to begin such individual's service obligation under section 254*l* of this title in accordance with section 254m or 254n of this title or to complete such service obligation, the United States shall be entitled to

recover from the individual an amount determined in accordance with [a specified formula equaling treble damages.]

42 U.S.C. § 254*o*(b)(1)(A). The relevant portion of subsection (a) of section 254*o* provides:

> **(1)** An individual who has entered into a written contract with the Secretary under section 254*l* of this title and who—
>
> **(A)** fails to maintain an acceptable level of academic standing in the educational institution in which he is enrolled (such level determined by the educational institution under regulations of the Secretary),
>
> **(B)** is dismissed from such educational institution for disciplinary reasons,
>
> **(C)** voluntarily terminates the training in such an educational institution for which he is provided a scholarship under such contract, before the completion of such training, or
>
> **(D)** fails to accept payment, or instructs the educational institution in which he is enrolled not to accept payment, in whole or in part, of a scholarship under

such contract,

in lieu of any service obligation arising under such contract, shall be liable to the United States for the amount which has been paid to him, or on his behalf, under the contract.

42 U.S.C. § 254*o*(a)(1).

This is the first case to present a subsection (a)(1)(D) fact pattern. Neither of the government's cited cases, *United States v. Bills*, 822 F.2d 373 (3d Cir. 1987) and *United States v. Turner*, 660 F. Supp. 1323 (E.D.N.Y. 1987), is on point because the defendants in both cases continued to receive scholarship funds through graduation, and neither defendant refused receipt of scholarship funds, in whole or in part. Therefore, this case presents a statutory interpretation question of first impression.

Interpretation of § 254o

The statute expressly provides that the treble damages provision applies only when scholarship recipients breach their written contract by means other than those detailed in subsection (a)'s purview. He contends that subsection (a)(1)(D) applies to him because he "fail[ed] to accept payment, or instruct[ed] the educational institution in which he [was] enrolled not to accept payment,

in whole or in part, of a scholarship under such contract," 42 U.S.C. § 254*o*(a)(1)(D), when he did not extend his scholarship to include his fourth and final year at Baylor. Williams suggests that the "plain meaning" of the provision at issue compels this result. *Cf. Green v. Bock Laundry Machine Co.*, 490 U.S. 504, 509-10 (1989) (unless the language of a statute compels an odd or absurd result, a court must interpret a statute in accordance with its plain meaning). We are not persuaded that subsection (a)(1)(D) has a "plain meaning."

Under Williams' broad interpretation of subsection (a)(1)(D), he is only obligated to repay the government the actual funds he received plus interest (minus the amount he had already repaid) because he paid for his final year of medical school himself and thereby did not accept payment, in part, of his NHSC scholarship.

[1] This interpretation, however, miscontrues the meaning of the term "scholarship" as it is used in section 254 generally, and section 254*o*(a)(1)(D) in particular. Williams assumes his "scholarship" includes four years of entitlement. Consequently, Williams interprets subsection (a)(1)(D)'s use of the term "scholarship" also to refer to all four years of his medical school education. The

statute, however, provides a narrow definition of the term "scholarship." Section 254*l* refers to a "scholarship" as a single, one-year unit corresponding to a given school year. *See* 42 U.S.C. § 254*l*(f)(1)(B)(iv) (written scholarship contract must contain an agreement by the individual "to serve for a time period. . . equal to—**(I)** one year for each school year for which the individual was provided a scholarship under the Scholarship Program"). Section 254*o* also uses the term "scholarship," and specifically refers to section 254*l*. We therefore see no reason to attribute two different meanings to the same term.

[2] We construe subsection (a)(1)(D) to treat each year that a recipient receives scholarship funds as separate and independent. This is consistent with the overall incremental structure of the scholarship program, which imposes a one-year service obligation for each year of funding (with a two-year minimum). Subsection (a)(1)(D) applies only in situations where a scholarship recipient signs a written contract for a given year, and then later, during the course of that year, fails to accept payment or directs his or her school not to accept payment, in whole or in part, for *that given year*. In such situations, the individual does not incur a service

obligation for that specific year, but instead must repay the government only those funds that had in fact been paid to him or her, or on his or her behalf, under the contract.[2]

[3] Therefore, Williams was still obligated to serve for three years under the NHSC. He could not evade his previously incurred service obligations by electing not to accept additional scholarship funds for a fourth year. Acceptance of Williams' argument would,

---

[2]For example, consider the following scenario. A scholarship participant is in her third year of medical school. She received NHSC scholarship funding for her first two years, and therefore incurred two years of service obligation. Again in her third year, she signs a continuing contract and begins to receive scholarship funds. The NHSC pays her first semester's tuition and costs directly to the university, and provides her with one semester's worth of a stipend and money for expenses. During the semester break, however, she meets a Beverly Hills plastic surgeon who persuades her that her true calling is not in helping those in underserved areas, but instead in helping Southern Californians perfect their appearances at any cost. Our medical students finds the offer too tempting, and too financially lucrative, to reject. Upon her return to school she directs administrators not to accept further payment from NHSC.

In such a situation, subsection (a)(1)(D) provides that, notwithstanding the fact that she signed a written contract obligating her for a third year, our budding plastic surgeon is only required to repay any amount of funds she received, or were paid to the university on her behalf, during that third year. This repayment is "in lieu of any service obligations" for that third year. None of this, however, in any way affects her previously incurred obligation to serve in the NHSC for the two years for which she did receive full funding.

in effect, grant scholarship participants the option to transform their scholarships into ordinary student loans in their final year of medical school. This court has noted, however, that the NHSC Scholarship Program "is not intended 'as a mechanism solely to subsidize health professional education,' but 'as a means to overcome a geographic maldistribution of health professionals.' " *Rendleman v. Bowen,* 860 F.2d 1537, 1541 (9th Cir. 1988) (quoting S. Rep. No. 94-887, 94th Cong., 1st Sess. 201 (1975)).

[4] Williams contends that our interpretation of the statute is unfair because it requires that once an individual accepts monies under the NHSC Scholarship Program, he can never leave the program without incurring a service obligation or suffering treble damages. Our interpretation, however, is in keeping with the statutory scheme. Congress intended that, except in unusual cases, those who receive scholarship funds either complete their service obligations or pay substantial penalties created the scholarship program in 1972, it recognized that exceptions to the damages provision might sometimes be appropriate," but the exceptions are narrow. *Buongiorno v. Sullivan,* 912 F.2d 504, 506 (D.C. Cir. 1990) (referring to 42 U.S.C. § 254*o*(d)(2), which provides for

partial or total waiver of a service obligation or damages payment in limited circumstances due to impossibility, undue hardship, or unconscionability); *see also United States v. Duffy*, 879 F.2d 192, 197 (6th Cir. 1989) ("The statute also provides that '[t]he Secretary may waive, in whole or in part, the rights of the United States to recover amounts under this section in any case of extreme hardship or other good cause shown, as determined by the Secretary.' [42 U.S.C.] § 254*o*(c)(3). ").

Appointment to the Corps

Finally, Williams argues that he cannot be subject to the statue's treble damages provision because he had not been "appointed to the NHSC." In support of this argument, Williams relies on a dissenting opinion by Judge Becker in *United States v. Bills*, 822 F.2d 373, 380-82 (3d Cir. 1987). Judge Becker interpreted the treble damages provision to apply only after an individual has formally been appointed to the Corps. 822 F.2d at 380. We reject this argument.

The majority in *Bills* correctly adhered to the clear meaning of the HHS's impelmenting regulations. *See* 822 F.2d at 377-78. The relevant HHS regulation provides: "If a participant fails to begin

or complete the period of obligated service. . ., *including failing to comply with the applicable terms and conditions of a deferment. ...*, [then he or she is subject to treble damages]." 42 C.F.R. § 62.10(c) (emphasis added). Whether an individual has been "appointed to the Corps" is irrelevant for purposes of 42 C.F.R. § 62.10(c), especially in cases like this one where the participant has failed to comply with the terms and conditions for deferment.

Williams defaulted on his service obligation when he failed to comply with the deferment requirements. It was because of his default that Williams was not "appointed to the Corps." In such a situation, an individual is properly subjected to treble damages under 42 U.S.C. § 254*o* and 42 C.F.R. § 62.10(c).

AFFIRMED.

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UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

UNITED STATES OF AMERICA

Plaintiff,

v.

FRED C. WILLIAMS, M.D.,

Defendants.

JUDGMENT IN A CIVIL CASE

CASE NUMBER: CIV-90-438-TUC-ACM

☐ **Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

☒ **Decision by Court.** This action came to hearing before the Court. The issues have been heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that plaintiff's motion for summary judgment is granted.

IT IS FURTHER ORDERED that judgment is granted in favor of the plaintiff and against the defendant in the amount of $166,255.68 plus interest and costs.

November 20, 1991
Date

Richard H. Weare
Clerk

Renee Ludeke
(By) Deputy Clerk, Renee Ludeke

cc:
FINN, MUELLER, ACM, J/B

JUDGEMENT

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

NO. 92-15042

CT/AG#: CV-90-00438-ACM

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

FRED C. WILLIAMS

Defendant - Appellant

APPEAL FROM the United States District Court for the District of Arizona (Tucson).

THIS CAUSE came on to be heard on the Transcript of the Record from the United States District Court for the District of Arizona (Tucson) and was duly submitted.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause be, and hereby is AFFIRMED.

Filed and entered May 19, 1993

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

UNITED STATES OF AMERICA, Plaintiffs, vs. FRED C. WILLIAMS, M.D., Defendant.	No. CIV 90-438 TUC ACM **ORDER**

INTRODUCTION:

The United States brought this action against Fred C. Williams, M.D. for an unpaid student loan. Both sides filed Motions for Summary Judgment.

DISCUSSION:

Williams is liable for three times the amount of his loan plus interest pursuant to 42 U.S.C. § 254*o*(b)(1)(A). The facts of this case indicate that Williams signed a scholarship contract in 1979. He then extended his contract in 1980 and 1981. He did not extend his contract in 1982. Williams' action in 1982 did not rescind the contract. If this Court were to find that Williams rescinded the

contract, then any student who wanted to get out of such an obligation could simply extend his or her contract and then tell the College not to accept payment. Such an argument is contrary to the express terms of the contract.

CONCLUSION:

Accordingly,

IT IS ORDERED Plaintiff's Motion for Summary Judgment is hereby GRANTED and that judgment be entered against Defendant for $166,255.68 plus interest and costs.

IT IS FURTHER ORDERED that judgment be entered accordingly.

Dated this 19th day of November, 1991.

Alfredo C. Marquez

ALFREDO C. MARGUEZ
Senior Judge

Copies mailed this date to.

Robert Finn
4400 E. Broadway, Ste. 801
Tucson, AZ 85711

James Mueller
110 S. Church Ave., Ste. 8310
Tucson, AZ 85701

APPENDIX E

§ 254*o*. **Breach of scholarship contract or loss repayment contract**

(a)(1) An individual who has entered into a written contract with the Secretary under section 338A [42 USCS § 254*l*] and who—

(A) fails to maintain an acceptable level of academic standing in the educational institution in which he is enrolled (such level determined by the educational institution under regulations of the Secretary),

(B) is dismissed from such educational institution for disciplinary reasons,

(C) voluntarily terminates the training in such an educational institution for which he is provided a scholarship under such contract before the completion of such training, or

(D) fails to accept payment or instructs the educational institution in which he is enrolled not to accept payment, in whole or in part, of a scholarship under such contract.

in lieu of any service obligation arising under such contract, shall be liable to the United States for the amount which has been paid to him, or on his behalf, under the contract.

(2) An individual who has entered into a written contract with the Secretary under section 338B [42 USC § 254*l*-1] and who—

(A) in the case of an individual who is enrolled in the final year of a course of study, fails to maintain an acceptable level of academic standing in the educational institution in which such individual is enrolled (such level determined by the educational institution under regulations of the Secretary) or voluntarily terminates such enrollment or is dismissed from such educational institution before completion of such course of study; or

(B) in the case of an individual who is enrolled in a graduate training program, fails to complete such training program and does not receive a waiver from the Secretary under section 338B(b)(1)(B)(ii) [42 USCS § 254*l*-1(b)(1)(B)(ii),

in lieu of any service obligation arising under such contract shall be liable to the United States for the amount that has been paid on behalf of the individual under the contract.

(b)(1)(A) Except as provided in paragraph 92), if an individual breaches his written contract by failing (for any reason not

specified in subsection (a) or section 338(d) [42 USCS § 254p(d)] either to begin such individual's service obligation under section 338A [42 USCS § 254p(d)] either to begin such individual's service obligation under section 338A [42 USCS § 254*l*] in accordance with section 338C or 338D [42 USCS §§ 254m or 254n] or to complete such service obligation, the United States shall be entitled to recover from the individual an amount determined in accordance with the formula

$$A = 3\phi \left(\frac{t-s}{t} \right)$$

in which "A" is the amount the United States is entitled to recover, " " is the sum of the amounts paid under this subpart to or on behalf of the individual and the interest on such amounts which would be payable if at the time the amounts were paid they were loan bearing interest at the maximum legal prevailing rate, as determined by the Treasurer of the United States; "t" is the total number of months in the individual's period of obligated service; and the "s" is the number of months of such period served by him in acordance with section 338C [42 USCS § 254m] or a written agreement under section 338D [42 USCS § 254n].

PART 62—NATIONAL HEALTH SERVICE CORPS SCHOLARSHIP AND LOAN REPAYMENT PROGRAMS

Subpart A—National Health Service Corps Scholarship Program

Sec.

62.1 What is the scope and purpose of the National Health Service Corps scholarship program?
62.2 Definitions.
62.3 Who is eligible to apply for a scholarship program award?
62.4 To whom will scholarship program awards be available in addition to those individuals pursuing courses of study leading to degrees in medicine, osteopathy or dentistry?
62.5 How is application made for a scholarship program award?
62.6 How will individuals be selected to participate in the scholarship program?
62.7 What will an individual be awarded for participating in the scholarship program?
62.8 What does an individual have to do in return for the scholarship program award?
62.9 Under what circumstances can the period of obligated service be deferred to complete approved graduate training?
62.10 What will happen if an individual does not comply with the terms and conditions of participating in the scholarship program?
62.11 When can a scholarship program payment obligation be discharged in bankruptcy?
62.12 Under what circumstances can the service or payment obligation be canceled, waived or suspended?

§ 62.10 What will happen if an individual does not comply with the terms and conditions of participating in the scholarship program?

(a) If a participant, other than one described in paragraph (b) of this section, fails to accept payment or instructs the school not to accept payment of the scholarship provided by the secretary, the participant must, in addition to any service or other obligation incurred under the contract, pay to the United States the amount of $1,500 liquidated damages. Payment of this amount must be made within 30 days of the date on which the participant fails to accept payment of the scholarship award or instructs the school not to accept payment.

(b) When a participant fails to maintain an acceptable level of academic standing, is dismissed from the school for disciplinary reasons, or voluntarily terminates the course of study or program for which the scholarship was awarded before completing the course of study or program, the participant must, instead of performing any service obligation, pay to the United States an amount equal to all scholarship funds awarded under § 62.7. Payment of this amount must be made within 3 years of the date the participant becomes liable to make payment under this paragraph.

(c) If a participant fails to begin or complete the period of obligated service incurred under § 62.8, including failing to comply with the applicable terms and conditions of a determent granted by the Secretary, the participant must pay to the United States an amount determined by the formula set forth in section 754(c) of the Act. Payment of this amount shall be made within 1 year of the date that the participant failed to begin or complete the period of obligated service, as determined by the Secretary.

FILED
NOV 8 1993
OFFICE OF THE CLERK

No. 93-369

In the Supreme Court of the United States

OCTOBER TERM, 1993

FRED WILLIAMS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether petitioner was liable to the United States for liquidated damages under 42 U.S.C. 254*o*(b)(1)(A) because he breached his obligation under the National Health Service Corps Scholarship Program to provide primary health care services in an underserved area of the country for three years in exchange for the government's payment of his medical school tuition and expenses for three years.

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In the Supreme Court of the United States

OCTOBER TERM, 1993

No. 93-369

FRED WILLIAMS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-17a) is reported at 994 F.2d 646. The order of the district court (Pet. App. 1d-2d) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on May 19, 1993. Pet. App. 1c. The petition for a writ of certiorari was filed on August 16, 1993. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Congress established the National Health Service Corps (NHSC) Scholarship Program, 42 U.S.C. 254*l*-254*o* (1988 & Supp. III 1991), to provide health

care in areas of the country that are underserved. See 42 U.S.C. 254*l*(a), (b)(4) (Supp. III 1991); 42 C.F.R. 62.1; see also, *e.g.*, *United States* v. *Citrin*, 972 F.2d 1044, 1046 (9th Cir. 1992); *United States* v. *Bills*, 822 F.2d 373, 376 (3d Cir. 1987).[1] To participate in the Scholarship Program, an individual must be enrolled in an accredited health care education program, such as a medical school, and be eligible for, or hold, an appointment as an officer in the Corps or be eligible for selection for civilian service in the Corps. 42 U.S.C. 254*l*(b)(1) and (2). In addition, the participant must sign "a written contract" with the Secretary of Health and Human Services (HHS) under which the participant agrees "to accept payment of a scholarship and to serve * * * for the applicable period of obligated service in a health professional shortage area." 42 U.S.C. 254*l*(b)(4) (Supp. III 1991).

A scholarship payment "under a written contract under the Scholarship Program" is "provided to a student for a school year." 42 U.S.C. 254*l*(g)(1). The scholarship covers (1) "the tuition of the student in such school year"; (2) "all other reasonable educational expenses * * * incurred by the student in such school year"; and (3) "payment to the student of a stipend * * * for each of the 12 consecutive months beginning with the first month of such school year." *Ibid.* Scholarships may be awarded "in each such school year or years for a period of years * * * determined by the individual, during which period the individual is pursuing a[n] [approved] course of

[1] Although Congress has amended the statute creating the NHSC Scholarship Program since the events that gave rise to this case, none of the amendments materially affects the provisions relevant here. We cite herein to the current statute.

study," for up to four years. 42 U.S.C. 254*l*(f)(1)(A). After a participant has received a scholarship for a given school year, he or she will receive "continuation scholarship[s]" for subsequent years if (1) he or she requests a continuation, (2) the continuation award would not extend the total period of scholarship support beyond four years, and (3) he or she remains eligible for the scholarship. 42 C.F.R. 62.6(e).

A recipient of scholarship payments agrees, in return for the payments, "to serve for a time period * * * equal to * * * (I) one year for each school year for which the individual was provided a scholarship under the Scholarship Program, or (II) two years, whichever is greater, as a provider of primary health services in a health professional shortage area * * * to which he is assigned by the Secretary as a member of the [National Health Service] Corps." 42 U.S.C. 254*l*(f)(1)(B)(iv) (1988 & Supp. III 1991). During the "period of obligated service" (*ibid.*), the scholarship recipient generally must engage in "the full-time clinical practice of such individual's profession." 42 U.S.C. 245m(a); but cf. 42 U.S.C. 245m(e) (service under a National Research Service Award counts against period of obligated service). The period of obligated service generally begins on the date when the scholarship recipient is appointed to the Corps. 42 U.S.C. 245m(c). That date generally follows the recipient's completion of his or her education program; a scholarship recipient may, however, obtain a deferment of the period of obligated service in order to complete "an internship, residency, or other advanced clinical training." 42 U.S.C. 254m(b)(5)(A)(i).

The consequences of a scholarship recipient's breach of a scholarship contract are set forth in

42 U.S.C. 254*o*, entitled "Breach of a scholarship contract or loan repayment contract." Section 254*o*(a) provides in relevant part:

> **(a) Failure to maintain academic standing; dismissal from institution; voluntary termination; liability; failure to accept payment**
>
> (1) An individual who has entered into a written contract with the Secretary under section 254*l* of this title and who—
>
> (A) fails to maintain an acceptable level of academic standing in the educational institution in which he is enrolled * * *,
>
> (B) is dismissed from such educational institution for disciplinary reasons,
>
> (C) voluntarily terminates the training in such an educational institution for which he is provided a scholarship under such contract, before the completion of such training, or
>
> (D) fails to accept payment, or instructs the educational institution in which he is enrolled not to accept payment, in whole or in part, of a scholarship under such contract,
>
> in lieu of any service obligation arising under such contract, shall be liable to the United States for the amount which has been paid to him, or on his behalf, under the contract.

Section 254*o*(b) then provides in pertinent part as follows:

(b) Failure to commence or complete service obligations; formula to determine liability; payment to United States; recovery of delinquent damages; disclosure to credit reporting companies

(1)(A) * * * [I]f an individual breaches his written contract by failing (for any reason not specified in subsection (a) of this section * * *) either to begin such individual's service obligation under section 254*l* of this title * * * or to complete such service obligation, the United States shall be entitled to recover from the individual an amount determined in accordance with [a formula providing for treble the amount of scholarship payments, plus interest].

Section 254*o*(d)(2) constitutes an exception to this provision. It provides for a waiver of the service obligation and of the liquidated-damages liability for a breach of that obligation if "compliance by the individual is impossible or would involve extreme hardship to the individual and if enforcement of such obligation with respect to any individual would be unconscionable." 42 U.S.C. 254*o*(d)(2); see also 42 C.F.R. 62.12.

2. Petitioner applied for and received scholarships under the NHSC Scholarship Program in each of his first three years at Baylor College of Medicine in Houston, Texas. In May 1979, he signed a contract for the 1979-1980 school year. He subsequently requested and received continuation scholarships for the school years 1980-1981 and 1981-1982. During the three-year period, he received scholarship payments totalling $22,182: $7283 for the first year, $6642 for

the second year, and $8257 for the third year. Pet. App. 5a-6a.

Petitioner did not request a continuation scholarship for his fourth year of medical school. Accordingly, he received no scholarship funds for that year. Pet. App. 6a.

Before petitioner graduated, HHS sent him a Deferment Information Bulletin, which explained that he could request deferment of his service obligation in order to complete a residency program. The bulletin explained that he had to request a deferment by June 30, 1983. After petitioner failed to respond to the bulletin, HHS sent him another notice advising him to respond immediately to avoid missing the June deadline. Again, petitioner failed to respond. As a result of petitioner's failure to seek a deferment of his service obligation, HHS advised petitioner that he would be in default of his scholarship contract as of September 30, 1983. Thereafter, HHS advised petitioner in a letter dated November 14, 1983, that because of his default, he was liable for liquidated damages under 42 U.S.C. 254*o*(b)(1). The letter instructed him to pay by September 30, 1984. Pet. App. 6a-7a.

Petitioner later moved to California without notifying HHS of his change of address. There, he began a residency program in neurosurgery (a specialty not approved under the Scholarship Program), which he completed in Arizona. During his residency, he repaid $6770 to HHS through a collection agency. Pet. App. 7a; see also 42 U.S.C. 254*o*(b)(1)(B)(ii) (authorizing use of collection agencies to recover delinquent debts).

In 1987, petitioner offered to fulfill his service obligation under the then-recently enacted Special Repayment Program (SRP), see Public Health Service Amendments of 1987, Pub. L. No. 100-177, § 204, 101 Stat. 1000-1003; 42 U.S.C. 254*o* note. The SRP was created to allow scholarship recipients who had breached their contracts, such as petitioner, to discharge their obligation by serving for a period in a "Health Manpower Shortage Area." Ultimately, however, HHS was unable to find an area in need of neurosurgery, as it is a specialty that is not approved under the program. Accordingly, in 1989 HHS notified petitioner that he was obligated to pay the balance of his debt. After petitioner failed to respond, HHS referred the matter to the Department of Justice. Pet. App. 7a-8a.

3. The United States commenced this action against petitioner in the United States District Court for the District of Arizona to recover liquidated damages pursuant to 42 U.S.C. 254*o*(b)(1) for his breach of his scholarship contract. The district court entered summary judgment in favor of the United States for $166,255.68, reflecting treble the amount of scholarship payments that had been made to petitioner, less the $6770 that petitioner had already repaid through a collection agency, plus interest and costs. Pet. App. 1d-2d. The court rejected petitioner's argument that he was not subject to liquidated damages under Section 254*o*(b)(1) because he had not requested a continuation scholarship for his fourth year of medical school. Pet. App. 1d-2d.

4. The United States Court of Appeals for the Ninth Circuit affirmed. Pet. App. 1a-17a. It framed the issue before it as "which damages provision

applies to [petitioner]: (1) 42 U.S.C. §254*o*(b)(1)(A), providing for a payment of treble damages * * *; or (2) 42 U.S.C. § 254*o*(a)(1), providing for payment of damages equal to the amount which has been paid to the scholarship recipient." *Id.* at 9a. The court observed that "the treble damages provision [in Section 254*o*(b)(1)] applies only when scholarship recipients breach their written contract by means other than those detailed in subsection (a)'s purview." *Id.* at 11a. The court rejected petitioner's argument that he had breached his contract by the means prescribed in subsection (a)(1)(D) because he had "fail[ed] to accept payment * * * of a scholarship under such contract." See *id.* at 11a-12a. The court determined that petitioner "misconstrues the meaning of the term 'scholarship' as it is used in section 254 generally, and section 254*o*(a)(1)(D) in particular." *Id.* at 12a. The court explained that petitioner erred in "assum[ing] [that] his 'scholarship' includes four years of entitlement." *Ibid.* To the contrary, the court stated:

> Section 254*l* refers to a "scholarship" as a single, one-year unit corresponding to a given school year. * * * Section 254*o* also uses the term "scholarship," and specifically refers to section 254*l*. We therefore see no reason to attribute two different meanings to the same term.

Id. at 13a (citation omitted).

Thus, the court construed subsection (a)(1)(D) "to treat each year that a recipient receives scholarship funds as separate and independent." Pet. App. 13a. Under that construction, the court held, "[s]ubsection (a)(1)(D) applies only in situations where a scholarship recipient signs a written contract for a given year, and then later, during the course of that

year, fails to accept payment or directs his or her school not to accept payment, in whole or in part, for *that given year*." *Ibid.* In that situation, the court continued, "the individual does not incur a service obligation for that specific year, but instead must repay the government only those funds that had in fact been paid to him or her, or on his or her behalf, under the contract." *Id.* at 13a-14a. But the individual's decision not to accept funds for that year would not, the court emphasized, "in any way affect[] [the recipient's] previously incurred obligation to serve in the NHSC for the * * * years for which [the individual] did receive full funding." *Id.* at 14a n.2. Accordingly, the court concluded that petitioner "could not evade his previously incurred service obligations by electing not to accept additional scholarship funds for a fourth year." *Id.* at 14a.

The court explained that its conclusion was consistent with the purpose of the Scholarship Program. It observed that "Congress intended that, except in unusual cases, those who receive scholarship funds either complete their service obligations or pay substantial penalties." Pet. App. 15a.[2] The interpretation

[2] This part of the court of appeals' opinion is not accurately reproduced in the petitioner's appendix (Pet. App. 15a). The relevant passage, as officially reported, states (994 F.2d at 650):

> Congress intended that, except in unusual cases, those who receive scholarship funds either complete their service obligations or pay substantial penalties. As the D.C. Circuit has noted, "[w]hen Congress created the scholarship program in 1972, it recognized that exceptions to the damages provision might sometimes be appropriate," but the exceptions are narrow. *Buongiorno* v. *Sullivan*, 912 F.2d 504, 506 (D.C. Cir. 1990) (referring to 42 U.S.C. § 254*o*(d)(2), which provides for partial or total waiver of a service

urged by petitioner, the court determined, "would, in effect, grant scholarship participants the option to transform their scholarships into ordinary student loans in their final year of medical school." *Id.* at 14a-15a. Such a result, the court concluded, would undermine the purpose of the Scholarship Program, which "is not intended 'as a mechanism solely to subsidize health professional education,' but 'as a means to overcome a geographic maldistribution of health professionals.'" *Id.* at 15a (quoting *Rendleman* v. *Bowen*, 860 F.2d 1537, 1541 (9th Cir. 1988), quoting in turn S. Rep. No. 887, 94th Cong., 2d Sess. 201 (1976)).

ARGUMENT

Petitioner contends (Pet. 15) that both the provision requiring recipients of scholarship payments under the NHSC Scholarship Program to provide a period of obligated service, 42 U.S.C. 254*l*(f)(1)(B)(iv) (1988 & Supp. III 1991), and the provision prescribing liquidated damages for breaches of that obligation, 42 U.S.C. 254o(b)(1)(A), apply only when a participant in the program receives scholarship payments for every year of his or her education program. In petitioner's view, if a participant receives scholarship payments for fewer than all years of the program, he or she does not have a service obligation and is not liable for liquidated damages for any failure to perform the service obligation; instead, such an individual need only repay the scholarship payments received. The court of appeals correctly rejected that argument,

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obligation or damages payment in limited circumstances due to impossibility, undue hardship, or unconscionability[.]

holding that it cannot be squared with the language or purposes of the statute. That holding, moreover, concerns an issue of first impression, as petitioner recognizes (Pet. 27), and thus does not conflict with any decision of this Court or that of any other court of appeals. Further review is therefore unwarranted.

1. Here, as in the court of appeals, petitioner places primary reliance on 42 U.S.C. 254*o*(a)(1)(D). Pet. 16-17. Petitioner's reliance on that provision is misplaced.

Section 254*o*(a)(1)(D) provides:

> An individual who has entered into a written contract with the Secretary under section 254*l* of this title and who —
>
> * * * * *
>
> (D) fails to accept payment, or instructs the educational institution in which he is enrolled not to accept payment, in whole or in part, of a scholarship under such contract,
>
> in lieu of any service obligation arising under such contract, shall be liable to the United States for the amount which has been paid to him, or on his behalf, under the contract.

Petitioner contends that his breach is covered by this Section, rather than Section 254*o*(b)(1)(A), which prescribes liquidated damages "if an individual breaches his written contract by failing (for any reason not specified in subsection (a) of this section * * *) either to begin such individual's service obligation under

section 245*l* * * * or to complete such service obligation." Petitioner's contention is incorrect.[3]

First, petitioner's decision not to sign a continuation scholarship contract for the fourth year of medical school was not a "fail[ure] to accept payment * * * of a scholarship under such contract" within the meaning of Section 254*o*(a)(1)(D). Section 254*o*(a)(1)(D) applies only to failures to accept scholarship payments that constitute a breach of a scholarship contract. Petitioner's decision not to extend his scholarship into his fourth year of medical school was not a breach of any scholarship contract. He simply decided not to sign a scholarship continuation contract for that year. He had no duty to extend his scholarship by requesting a contract for his fourth year, he did not request such a fourth-year contract, and his non-receipt of a scholarship in his fourth year was therefore not a "fail[ure] to accept payment * * * of a scholarship" for purposes of Section 254*o*(a)(1)(D).

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[3] Although both petitioner (see, *e.g.*, Pet. 7, 15) and the court of appeals use the term "treble damages" to refer to the amount of damages recoverable under Section 254*o*(b)(1)(A), that term is not accurate. Section 254*o*(b)(1)(A) authorizes the recovery of treble the amount of scholarship payments made to a recipient, plus interest. The damages caused by a breach of a scholarship contract, though not precisely quantifiable, plainly exceed the amount of scholarship payments. As one court explained, "Who is to measure the reasonable value of a doctor's services for three years in an underserved area? Certainly it is far greater than the precise amount of the money expended by the federal government in financing the doctor's education." *United States* v. *Swanson*, 618 F. Supp. 1231, 1242 (E.D. Mich. 1985). Accordingly, the term "liquidated damages" is more accurate.

Petitioner's contrary argument rests on the erroneous view that the term "scholarship" in Section 254*o*(a)(1)(D) refers to a four-year entitlement. See Pet. App. 12a. As the court of appeals correctly explained, the term "scholarship" instead refers to a payment for a *single* school year. That is clear from Section 254*l*(g)(1), which states that a "scholarship" is "provided to a student for a school year" and covers (1) "the tuition of the student in such school year"; (2) "all other reasonable educational expenses * * * incurred by the student in such school year"; and (3) "payment to the student of a stipend * * * for each of the 12 consecutive months beginning with the first month of such school year." 42 U.S.C. 254*l*(g)(1). In addition, Section 254*l*(f)(1)(B)(iv) provides that the scholarship contract must contain an agreement by the recipient "to serve for a time period * * * equal to * * * (I) one year for each school year for which the individual was provided a scholarship under the Scholarship Program," or two years, whichever is greater. 42 U.S.C. 254*l*(f)(1)(B)(iv) (1988 & Supp. III 1991).

Thus, the term "scholarship," as used in Section 254*l*, plainly means the payment provided for a single school year. The court of appeals correctly concluded that the term should have the same meaning for purposes of Section 254*o*. Pet. App. 13a; see, *e.g.*, *Estate of Cowart* v. *Nicklos Drilling Co.*, 112 S. Ct. 2589, 2596 (1992); *Morrison-Knudsen Constr. Co.* v. *Director, Office of Workers' Compensation Programs*, 461 U.S. 624, 633 (1983).

The court of appeals' interpretation of the term "scholarship" makes sense of Section 254*o*(a)(1)(D). Under that interpretation, Section 254*o*(a)(1)(D)

means that when an individual breaches a scholarship contract for a particular school year by declining to accept some or all of the scholarship payment for that year, the individual's liability for that year is limited to any scholarship amounts paid in that year. So read, Section 254o(a)(1)(D) relieves an individual of a service obligation with respect to a school year in which he declines a scholarship in whole or in part. It does not, however, affect any service obligation that arises from the individual's receipt of scholarship payments in prior school years.[4]

Petitioner's interpretation of Section 254o(a)(1)(D), in contrast, leads to wholly illogical results. Under his interpretation, scholarship recipients could routinely avoid service obligations and liquidated damages. All they would have to do is pay for the final part of their education program themselves. For example, a medical school student presumably could, after having the government pay his or her medical school expenses for three years and 11 months, wipe

[4] HHS advises us that its policy is not to seek liquidated damages from scholarship recipients who breach their scholarship contracts in one of the ways specified in Section 254o(a)(1)(A) through (a)(1)(C)—for example, by failing to complete their medical school studies. Although the statute could be read to allow recovery of liquidated damages from individuals who commit such breaches, liquidated damages are not sought because such individuals are not qualified (because of their failure to complete their medical education) to avoid liquidated damages by performing their service obligations. In contrast to those individuals, individuals who do complete their education program, such as petitioner, would be able to avoid liquidated damages by performing their service obligation, except for their voluntary decision not to obtain a deferment in order to complete an approved residency program. See 42 C.F.R. 62.9(b).

out his or her three-year service obligation by declining to accept the last month's stipend. Scholarship recipients who breached their scholarship contracts in this manner would thus be better off than scholarship recipients who lived up to their contract obligations.

Petitioner's interpretation would also frustrate the purpose of the NHSC Scholarship Program. As the court of appeals recognized, the scholarship program "is not intended 'as a mechanism solely to subsidize health professional education,' but 'as a means to overcome a geographic maldistribution of health professionals.'" Pet. App. 15a (quoting *Rendleman* v. *Bowen*, 860 F.2d 1537, 1541 (9th Cir. 1988), quoting in turn S. Rep. No. 887, 94th Cong., 2d Sess. 201 (1976)). To that end, the statute generally requires that scholarship recipients either provide health care services in an underserved area or pay substantial penalties for failing to do so. The statute allows for exceptions to that requirement only when compliance "is impossible or would involve extreme hardship to the individual and if enforcement of such obligation with respect to any individual would be unconscionable." 42 U.S.C. 254*o*(d)(2). Petitioner's interpretation, however, transforms the service obligation into a service option, avoidable by the expediency of declining any part of a scholarship payment, however small.

2. Petitioner also relies (Pet. 22-25) on Section 254m to support his argument that the liquidated-damages provision in Section 254*o*(b)(1) does not apply to him. Section 254m, however, does not support this position.

Under Section 254m, the period of obligated service generally begins only after a scholarship recipient has been appointed to the National Health Service Corps. 42 U.S.C. 254m(c)(1) ("An individual shall be considered to have begun serving a period of obligated service * * * (1) on the date such individual is appointed as an officer in a Regular or Reserve Corps of the Service or is designated as a member of the Corps."). Petitioner argues (Pet. 24-25) that because Section 254*o*(b)(1) applies to breaches that occur as a result of an individual's failure to begin or complete a period of obligated service, it applies only to breaches that occur after the individual's appointment to the Corps. That argument is without merit.

Petitioner's argument rests on the erroneous assumption that the duty to perform a period of obligated service does not arise until after appointment to the Corps. To the contrary, a scholarship recipient's service obligation arises when he or she enters into a scholarship contract with the Secretary. See 42 U.S.C. 254*l*(f)(1)(B)(iv) (1988 & Supp. III 1991). Thus, it is possible for a scholarship recipient to breach his or her duty to perform obligated service without being appointed to the Corps. And unless that breach occurs for one of the reasons set forth in Section 254*o*(a)(1), or comes within the waiver provision of Section 254*o*(d)(2), it gives rise to liability for liquidated damages under Section 254*o*(b)(1).

Petitioner was liable for liquidated damages, notwithstanding his failure to renew his scholarship contract for the fourth year of medical school. He breached his duty to perform obligated service by failing to obtain a deferment of that obligation pending the completion of his residency. See Pet.

App. 17a. It was because of his failure to obtain a deferment pending completion of an approved residency program—and not because of his failure to accept scholarship money in the fourth year of school —that he was not appointed to the Corps. Thus, petitioner failed to begin his period of obligated service for a reason other than one set forth in Section 254*o*(a)(1) and was not entitled to a waiver under Section 254*o*(d)(2). That breach exposed him to liquidated damages under Section 254*o*(b)(1).

In another case involving a scholarship recipient who breached his contract by failing to obtain a deferment, the Third Circuit held that the government could recover liquidated damages under Section 254*o*(b)(1). *United States* v. *Bills*, 822 F.2d 373, 377-378 (1987). The Third Circuit in *Bills* rejected the scholarship recipient's argument that the liquidated-damages provision applies only to breaches that occur after a scholarship recipient has been appointed to the National Health Service Corps. *Ibid.* The court of appeals in this case correctly rejected the identical argument advanced by petitioner, which is based solely on the dissenting opinion in *Bills*. Pet. App. 16a-17a; Pet. 24 (citing *Bills*, 822 F.2d at 380 (Becker, J., dissenting in part and concurring in part)).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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